



Entered on Docket
August 25, 2011

Hon. Linda B. Riegle
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re

Chapter 11

THE RHODES COMPANIES, LLC, aka
“Rhodes Homes,” et al.,

Case No. BK-S-09-14814-LBR
(Jointly Administered)

Reorganized Debtors.

**STIPULATION AND ORDER WITH
RESPECT TO COMMERCE ASSOCIATES'
PROOF OF CLAIM NO. 61-1**

Affects all Debtors

Hearing Date: August 2, 2011
Hearing Time: 9:30 a.m.
Place: Courtroom 1

Affects the following Debtors

Commerce Associates, LLC (“Commerce”), by and through its undersigned counsel, Jones Vargas, and the above-captioned reorganized debtors (collectively, the “Reorganized Debtors”), by and through their undersigned counsel, Kolesar & Leatham and Akin Gump Strauss Hauer & Feld LLP, respectfully submit this Stipulation and Order With Respect to Commerce Associates’ Proof of Claim No. 61-1 (the “Order”). Commerce and the Reorganized Debtors are collectively referred to herein as the “Parties.” The Parties stipulate and agree as follows:

WHEREAS, on August 6, 2009, Commerce filed Proof of Claim No. 61-1 (the “Proof of Claim”) by which it asserted a secured claim in an unspecified amount against Rhodes Design and Development Corporation (“RDD”) and other Debtor Entities on account of Profit Participations and Lot Premiums purportedly owing under the November 14, 2003 agreement between RDD and Commerce (the “Commerce Claim”).

WHEREAS, on March 31, 2011 the Reorganized Debtors filed an objection to the Proof of Claim and sought entry of an order, pursuant to Bankruptcy Code section 502(b) and Bankruptcy Rule 3007, reclassifying the Commerce Claim as an unsecured claim based on certain subordination agreements entered into between Commerce and Credit Suisse in the amount of approximately \$2,741,096, based on an initial analysis of the Debtors' books and records.

1 WHEREAS, on April 25, 2011 Commerce filed an opposition to the Reorganized Debtors' 2 objection, alleging that certain claims set forth in the Proof of Claim were not subject to the 3 subordination agreements described in the Reorganized Debtors' objection, and, thus, were not 4 unsecured claims.

5 WHEREAS, on May 2, 2011 the Reorganized Debtors filed their reply in support of their 6 objection in which they requested that this Court (i) deem the entirety of Commerce's claim unsecured 7 and subject to the treatment afforded Class C-1 under the Plan for General Unsecured Claims and (ii) 8 liquidate Commerce's claim in the amount of \$2,741,096.

9 WHEREAS, on May 9, 2011 this Court held a hearing with respect to the Commerce Claim 10 during which this Court determined that the matter would be continued for 60 days in order to allow 11 Commerce to conduct discovery.

12 WHEREAS, on June 14, 2011 Commerce served the Reorganized Debtors with their first 13 request for production of documents (the "Document Request").

14 WHEREAS, the Reorganized Debtors have substantially complied with the Document Request.

15 WHEREAS, a hearing was scheduled on this matter for July 19, 2011 (the "Hearing").

16 WHEREAS, on July 19, 2011 Commerce filed the declaration of Michael Buckley in support of 17 Commerce's opposition to the Reorganized Debtors' objection to the Commerce Claim (the 18 "Declaration") in which Commerce stated that it required additional information with respect to the Lot 19 Premiums and Profit Participations for certain parcels.

20 WHEREAS, the hearing was adjourned until August 2, 2011 to provide the Parties an 21 opportunity to consensually resolve their dispute.

22 WHEREAS, on August 2, 2011 this Court held a status conference with respect to the 23 Commerce Claim (the "Status Conference").

24 WHEREAS, at the Status Conference the Parties informed the Court that they had agreed that 25 the Lot Premiums and Profit Participations identified in the Declaration have either been (i) paid in full 26 prior to the Petition Date, or (ii) subordinated to the liens securing the First Lien Credit Agreement and 27 are thus unsecured obligations of these estates.

1 WHEREAS, the Reorganized Debtors subsequently have determined, based on their review of
2 relevant documents and the books and records, that Commerce has an unsecured claim in the amount of
3 \$1,597,347. As a result, the Parties have agreed to the following set forth below.

4 **IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned counsel for
5 the Parties, as follows:

6 1. No portion of the claim asserted in the Proof of Claim is secured.
7 2. Commerce has an allowed unsecured claim in the amount of \$1,597,347 against the
8 following Debtors Entities: Rhodes Design and Development Corp.; Tuscany Acquisitions, LLC;
9 Tuscany Acquisitions II, LLC; Tuscany Acquisitions III, LLC; Tuscany Acquisitions IV, LLC; and
10 Rhodes Ranch Golf Country Club, LLC.
11 3. Commerce's allowed unsecured claim shall receive the treatment afforded creditors in
12 Class C-1 General Unsecured Claims under the Plan.

13 DATED this 24th day of August 2011.

14 Prepared and respectfully submitted by:

15 **JONES VARGAS**

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